

Initial Statement of Reasons

Title 13, Division 1, Chapter 1

Article 2.55. California Ignition Interlock Device Program

The Department of Motor Vehicles (department) proposes to amend Sections 125.00 and 125.02, adopt Section 125.19, and repeal Section 127.06, in Article 2.55, Chapter 1, Division 1, Title 13 of the California Code of Regulations, related to the California Ignition Interlock Device (IID) Program.

The department is responsible for administering the California IID Program. An IID is a device that is connected to a vehicle's ignition that requires the driver to provide a breath sample before the engine will start. If the IID detects alcohol in the driver's breath, the engine will not start.

Current law requires the department to suspend the driver's license of a person who is arrested for driving under the influence of alcohol, or is convicted of certain violations involving driving under the influence of drugs and/or alcohol. In accordance with Vehicle Code sections 13352(a)(3) through (a)(7) and 13353.3, upon arrest, and again upon conviction, the driver will serve a cursory term of suspension and, if the driver provides satisfactory proof that he or she is enrolled in a specified driving-under-the-influence program, provides proof of financial responsibility and IID installation, and pays specified restriction and reinstatement fees, the driver can apply to the department to have an IID restriction. Once an IID is installed, the driver is required to have the device inspected and calibrated by a certified IID installer at least once every 60 days.

Senate Bill 1046 (Chapter 783; Statutes of 2016) amended Vehicle Code section 23575 to require a driver whose vehicle is affixed with an IID to complete retests at randomly variable intervals. Vehicle Code section 23575(p) requires the department to adopt regulations specifying the intervals between random retests. In order to determine acceptable interval ranges, the department reviewed the processes of other states with randomized interval testing and consulted with IID manufacturers to determine the interval testing capabilities of devices currently in operation. The department found that all IID manufacturers had similar intervals for their devices. Specifically, the manufacturers that the department consulted with reported that their devices could require a first test within five to fifteen minutes after the initial test that allows the engine to start and at random intervals between ten to forty-five minutes for subsequent tests. These intervals were also found to be consistent with those used by other states. However, the American Association of Motor Vehicle Administrators (AAMVA) recommends that the first retest should occur between five and fifteen minutes, and second and subsequent tests should occur between fifteen and forty-five minutes from the conclusion of the previous retest (*Ignition Interlock Program Best Practices Guide*, 2015, pp. 12 – 13). In the end, the department determined that the first retest should occur between five and fifteen minutes after the initial vehicle start and subsequent tests should occur at randomized intervals between fifteen and forty-five minutes for subsequent retests. Upon approval of this regulatory action, manufacturers will program devices that are ready for use in California to require random interval testing. For drivers with devices already installed in their vehicles, their IIDs will be updated with the random interval requirements at the time of their next IID inspection and calibration service.

In 2010, with passage of Assembly Bill 91 (Chapter 217; Statutes of 2009), the department began a pilot program in the counties of Alameda, Los Angeles, Sacramento, and Tulare through December 31, 2018. Under the pilot program, all persons convicted of driving under the influence of drugs/alcohol, except for those who qualify for an exemption, are required to install a certified IID on each vehicle he or she owns or operates. AB 91 also adopted Vehicle Code section 13386(g) requiring IID manufacturers to provide an annual report to the department documenting the number of false positives and the time it takes to reset the device. The information contained in these reports were used by the department to evaluate the continued certification of a device.

SB 1046 repealed Vehicle Code section 13386(g). Therefore, the department is repealing the associated rule that requires manufacturers to submit the annual report to the department.

CONSIDERATION OF ALTERNATIVES

The department must determine that no reasonable alternative considered, or that has otherwise been identified and brought to the attention of the department, would be more effective in carrying out the purpose for which this action is proposed, would be as effective and less burdensome to affected private persons that the action proposed, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

§ 125.00. Definitions.

Subsection (c) is repealed to avoid confusion. The department has relied on the federal rule to define ‘bypass’. However, SB 1046 adopted a definition different from that used by the federal government. The department has determined that the definition should be removed in order to ensure there is no confusion between the federal definition and the state definition.

Subsections (d) through (i) are renumbered to subsections (c) through (h), respectively.

Subsection (d) is amended to remove the phrase ‘or assembling’ from the definition of ‘manufacturer’. This is to avoid any possible misinterpretation of the word ‘assembling’ for certification purposes.

Subsections (j) and (k) are repealed due to lack of necessity. The terms ‘false positive’, as defined in subsection (j), and ‘time to reset the device’, as defined in subsection (k), only appear in Section 127.06. Section 127.06 is being repealed in this action.

Subsections (l) and (m) are renumbered to (i) and (j), respectively.

§ 125.02. Certification of Ignition Interlock Devices.

The purpose of Section 125.02 is to identify the requirements an IID must meet when being certified for use in California.

Subsection (a) is adopted to make clear that IIDs being certified for use in California are required to meet the specifications adopted by the National Highway Traffic Safety Administration as identified in Vehicle Code section 13386 and to adopt the requirement that the device be able to require the driver to submit to retests at random intervals. This provision is necessary to implement the requirement of Vehicle Code section 23575(q).

Subsection (a)(1) is adopted, as required by Vehicle Code section 23575(p), to specify the acceptable interval ranges. The department consulted with several IID manufacturers and other states to make a determination on what those ranges would be. In its discussions with manufacturers, the department learned that the move to random interval testing could easily be facilitated through the programming of testing procedures. The new programming would be effective for new devices and could be downloaded to existing devices at the time of the next device inspection and service. Additionally, the department found that most installers already use random interval testing timeframes on a largely consistent basis, ranging from within ten to fifteen minutes from engine start up and from fifteen to forty-five minutes for subsequent tests. Based on AAMVA's recommendation, the department determined that the first retest will occur between five and fifteen minutes after the initial vehicle start and subsequent tests should occur at randomized intervals between fifteen and forty-five minutes from the previous retest.

Subsection (a)(2) is adopted to require the device to allow the driver five minutes to complete each retest. This provision is necessary for those drivers who do not feel comfortable retesting while driving. Five minutes will allow the driver sufficient time to move out of traffic to take the test.

Subsection (a) is renumbered to subsection (b).

Subsection (b)(14) is adopted to require the manufacturer to submit to the department a Random Retest Compliance Self-Certification, form OL 624, as part of its application to have a device certified for use in California.

Random Retest Compliance Self-Certification, form OL 624

The OL 624 is a new departmental form consisting of four sections.

Section 1 – Manufacturer Information

Section 1 requires the manufacturer to provide its contact information including its name, street address, and mailing address. This information is consistently collected by most departmental forms and is necessary to ensure the department's IID certification records reflect the correct manufacturer and device.

Section 2 – Ignition Interlock Device Information

Section 2 requires the manufacturer to identify the device name, model number, and a description of the device. This information is necessary to ensure that the department is certifying the correct device and, because in some instances manufacturers have multiple devices, will ensure the department's IID records accurately reflect the certification for the appropriate device.

Section 3 – Self Certification Acknowledgement

The manufacturer is required to certify that the device meets requirements that will ensure compliance with the random interval testing required by Vehicle Code section 23575. Each element identifies the governing statute or rule and requires the manufacturer to initial the following certifications:

California Ignition Interlock Device Program
Initial Statement of Reasons

- That the ignition interlock device identified in Section 2 requires the operator of the vehicle to submit a random retest, as required by Vehicle Code section 23575.
- That the ignition interlock device identified in Section 2 requires the first retest to occur at a randomly variable interval ranging from five to fifteen minutes after the initial breath test and start of the vehicle's engine, and requires all subsequent retests to occur at randomly variable intervals ranging from fifteen to forty-five minutes from the previously requested retest during the duration of the travel, as specified in Title 13, Article 2.55, Section 125.02(a)(1) of the California Code of Regulations.
- That the ignition interlock device identified in Section 2 allows the operator of the vehicle five minutes to complete each retest, as specified in Title 13, Article 2.55, Section 125.02(a)(2) of the California Code of Regulations.

Section 4 – Certification

Section 4 requires the authorized representative of the manufacturer to certify under penalty of perjury that the information contained in the OL 624 is true and correct. This certification is consistent with other departmental forms that contain a certification and is also consistent with Code of Civil Procedure section 2015.5(b). Section 4 also requires the authorized representative to certify that he or she is the authorized official of the program and understands that the information provided is subject to a thorough investigation by the department. The representative also certifies that he/she understands that a false, fictitious or fraudulent claim may subject me and/or the manufacturer to administrative action to deny, suspend, or revoke certification of the ignition interlock device. This certification will ensure the manufacturer is aware of the department's authority to ensure the information contained in the self-certification is correct and the sanctions involved with providing false information.

The application fee, originally identified in subsection (a)(14) is renumbered to subsection (b)(15).

Subsections (b), (c), (d), and (e), are renumbered to subsections (c), (d), (e), and (f), respectively.

§ 125.19. Re-Impose Ignition Interlock Restriction Term.

Section 125.19 is adopted to make clear that a driver whose optional IID restriction is suspended due to non-compliance with the IID maintenance requirements may have that restriction re-imposed by providing the department with a new Verification of Installation. This provision will ensure that a driver whose suspension or revocation was re-imposed, is aware of the options available to have the restriction re-imposed.

§ 127.06. Annual Report.

Section 127.06 is repealed because, effective January 1, 2017, the department no longer has statutory authority to collect the annual report from manufacturers.

DEPARTMENTAL DETERMINATIONS

- *Technical, Theoretical and/or Empirical Studies, Reports or Documents:*
Ignition Interlock Program Best Practices Guide, (2015), American Association of Motor Vehicle Administrators, pp. 12-13
- *Reasonable Alternatives That Would Lessen Any Adverse Impact on Small Business:* No alternatives were considered or presented that would lessen any adverse impact on small business.
- *Evidence Supporting Determination of No Significant Adverse Economic Impact on Business, Including the Ability to Compete:* IIDs are currently capable of being updated with programming to allow for random interval testing and the updates can be easily downloaded during the device's regular service schedule. Since this action does not impose a new responsibility on IID manufacturers or installers, the department does not anticipate an adverse economic impact to businesses.

ECONOMIC AND FISCAL IMPACT DETERMINATIONS

- *Cost or Savings To Any State Agency:* None.
- *Other Non-Discretionary Cost or Savings to Local Agencies:* None.
- *Costs or Savings in Federal Funding to the State:* None.
- *Cost Impact on Representative Private Persons or Businesses:* The department is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action. Drivers who have devices installed in their vehicles do pay fees for the maintenance of the devices, however, those costs are set by the installers and are not a subject of this proposed action.
- *Effect on Housing Costs:* None.
- *Local Agency/School District Mandates:* The proposed regulatory action will not impose a mandate on local agencies or school districts, or a mandate that requires reimbursement pursuant to Part 7 (commencing with Section 17500) of Division 4 of the Government Code.
- *Cost to any local agency or school district which must be reimbursed in accordance with Government Code sections 17500 through 17630:* None.
- *Small Business Impact:* This proposed action may have an impact on small businesses.

- *Potential Significant Statewide Adverse Economic Impact on Business:* This action is unlikely to have any significant statewide adverse economic impact on businesses. IID manufacturers are currently able to program devices to require random interval testing, therefore, the department does not anticipate the requirements in this action to have a significant adverse impact.

ECONOMIC IMPACT ASSESSMENT

(Government Code section 11346.3)

The department has made the following determinations related to this proposed regulatory action:

- *Creation or Elimination of Jobs Within the State of California*

The purpose of this proposed action is to require all IIDs used in California be capable of requiring the driver to take retests at randomized intervals. The only impact to jobs would occur when IID service centers have to update the device to activate its random retest capabilities. This update is expected to occur at the time of each service and will likely only add minutes on to the IID service. Therefore, the department has determined that this action will not impact the creation or elimination of jobs within California.

- *Creation or Elimination of Existing Businesses Within the State of California*

IIDs are installed by service centers that work with a specific IID manufacturer. The service centers are usually vehicle repair facilities and audio/video and window tinting businesses, all of which are required to have a valid license issued by either the Bureau of Automotive Repair or the Bureau of Electronic and Appliance Repair, Home Furnishings and Thermal Insulation. Because IID servicing is not the main service offered by these businesses, the department does not anticipate that this proposed action will create or eliminate existing businesses within California.

- *Expansion of Business Currently Doing Business Within the State of California*

The department does not anticipate this action expanding businesses currently doing business within California. The IID servicing is not the main service offered by the service centers. A majority of the service center business relies on automotive repair and car audio or window tinting services and their only impact by this action will be during the IID service when they are required to update the device to allow its random retest capabilities. Any increase in work during the service of the IID is not so great that it would be likely to expand any of the automotive facilities that service IIDs.

- *Benefits of Regulation to the Health and Welfare of California Residents, Worker Safety and the State's Environment*

This action will benefit the health and welfare of California residents and the motoring public, in general, by ensuring the continued sobriety of drivers with IIDs in their vehicles. Drivers will be retested every fifteen to forty-five minutes during their drive. This action is not likely to have a significant impact on worker safety or the state's environment.

California Ignition Interlock Device Program
Initial Statement of Reasons